

REMARKS

Claims 1-5, 8-14 and 16-20 currently are pending. Claims 1, 8 and 24-29 currently have been amended.

The Examiner stated that claim 1 and claims 4-12 and 24 dependent thereon are indefinite in the recitation of "negligible reduction in the enzymatic action," since it is unclear what would constitute a "negligible reduction," and the specification fails to define or clarify the use of this term.

In response, applicants herein amend claim 1 to include the required activity of the polypeptides and delete "negligibly reduced."

The Examiner rejected claim 8 as indefinite because the Examiner believes they are unduly alternative in referring to "functional or nonfunctional" nucleic acid sequence.

In response, applicants delete "functional" from claim 8.

The Examiner stated that claims 9 and 10, and claims 11 and 12 dependent thereon are indefinite in the recitation of "oil-producing organism," since most, if not all, organisms produce some form of oil.

In response, applicants acknowledge that "oil producing organism" may be broad. However, breadth of a claim is not to be equated with indefiniteness. *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971). If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of scope different from that defined in the claims, then the claims comply with 35 USC § 112, ¶2.

Claim 26 has been amended to add "comprising."

Applicants also amend the appropriate claims by adding "non-human."

Claims 1, 4, 5, 8-12 and 24-29 are rejected under 35 USC § 112, ¶1, as failing to comply with the written description requirement.

A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. *In re Marzocchi*, 439 F2d. 220, 224, 169 USPQ 367, 370 (CCPA 1971). Applicants believe the Examiner has failed to rebut this presumption and therefore respectfully request withdrawal of the rejections under 35 USC § 112, ¶1.

Applicants point out that on page 30, lines 1-41, the cloning of cer1 (SEQ ID NO: 3) is disclosed. Also, on page 32 (lines 17-27) the cloning of the cer3 (SEQ ID NO: 7, page 28, lines 4-21) gene is disclosed. disclosure of a sufficient number of the species in the claimed genus is contained in the application.

Claims 1, 4, 5, 8-12 and 24-29 are rejected under 35 USC § 112, ¶1, as failing to comply with the enablement requirement.

Applicants again submit that in addition to the expression of the genes in yeasts one of ordinary skill in the art would have enough guidance to make and use the present invention. In addition to the expression of the genes in yeasts the skilled worker is given guidance on how to transform different organisms such as microorganisms and plants on page 18-20. Many different useful vectors are disclosed and different transformation protocols, which are in general used by the skilled worker. Examples 3, 4, 5 and 10 teach the creation of transformed plants. The extraction of oils are disclosed in examples 9 and 11.

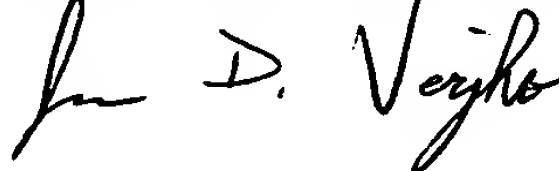
In view of the present amendment and remarks, applicants consider that the rejections of

record have been obviated and respectfully solicit passage of the application to issue.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees to Deposit Account No. 14-1437. Please credit any excess fees to such deposit account.

Respectfully submitted,

NOVAK DRUCE DeLUCA & QUIGG, LLP

A handwritten signature in black ink, appearing to read "J. D. Voight", is written over the printed name.

Jason D. Voight
Reg. No. 42205

1300 Eye Street, N.W.
Suite 400 East Tower
Washington, D.C. 20005
(202)659-0100
JDV/DSK